Signatory Labor Committee of the Colorado Contractors' Association, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13

Signatory Labor Committee of the Colorado Contractors' Association, Inc.; APH Service Co.; Amcor, Inc.; Barnett Company, Demolition; Byerly & Byerly, Inc.; Central Construction, Inc.; Corn Construction Co.; Martin K. Eby Const. Co., Inc.; Eisenhower Construction Co., Inc.; Granite Construction Co.; Great Northern Electric Co.; Hartley and Sons, Inc.; A. S. Horner Const. Co., Inc.; Johnson Bros. Corp; Kenny Construction Co., Inc.; Lawrence Construction Co.; H-E Lowdermilk Co.; W. G. Morgan Const. Inc.; Pascal Construction Co.; Gerald H. Phipps, Inc.; Schmidt-Tiago Const. Co.; Taylor Construction Corp.; Watts Bros., Inc.; Winslow Construction Co.; Underground Const. Co., Inc.; Burdick Contractors, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13. Cases 27-CA-7369 and 27-CA-7369-2

May 28, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On February 8, 1982, Administrative Law Judge Roger B. Holmes issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Signatory Labor Committee of the Colorado Contractors' Association, Inc.; APH Service Co.; Amcor, Inc.; Barnett Company, Demolition; Byerly & Byerly, Inc.; Central Construction, Inc.; Corn Construction Co.; Martin K. Eby Const. Co., Inc; Eisenhower Construction Co., Inc.; Granite Construction Co.; Great Northern Electric Co.; Hartley and Sons, Inc.; A. S. Horner Const. Co., Inc.; Johnson Bros. Corp.; Kenny Construction Co., Inc.; Lawrence Construction Co.; H-E Lowdermilk Co.; W. G. Morgan Const. Inc.; Pascal Construction Co.; Gerald H. Phipps, Inc.; Schmidt-Tiago Const. Co.; Taylor Construction Corp.; Watts Bros. Inc.; Winslow Construction Co.; Underground Const. Co., Inc.; Burdick Contractors, Inc., their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

ROGER B. HOLMES, Administrative Law Judge: Based upon an unfair labor practice charge filed on June 22, 1981, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, in Case 27-CA-7369, and based upon an unfair labor practice charge filed on July 2, 1981, and amended on August 6, 1981, by the Union in Case 27-CA-7369-2, the General Counsel issued on September 14, 1981, an amended consolidated complaint alleging violations of Section 8(a)(1) and (5) of the Act by the Signatory Labor Committee of the Colorado Contractors' Association, Inc., and the Employers named above in the caption.

The hearing was held on October 15 and 16, 1981, in Denver, Colorado. The time for filing post-hearing briefs was set for November 20, 1981.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The Board's jurisdiction is not in issue in this proceeding. The Respondent Employers are engaged in the construction industry, and, collectively, they meet the Board's direct inflow and direct outflow jurisdictional standards.

The status of the Charging Party Union as being a labor organization within the meaning of the Act also is not in dispute, and such status was admitted in the pleadings.

II. THE WITNESSES AND CREDIBILITY RESOLUTIONS

Seven witnesses testified at the hearing in this proceeding. In alphabetical order by their last names, the following persons were called as witnesses: Richard J. DeLaCastro, who is the vice president of business development for the Schmidt-Tiago Construction Company; Rob C. Easdon, who is the vice president and a business agent of the Charging Party Union; Carl F. Krueger, who is the president of the A. S. Horner Construction Company, and who during 1981 was the chairman of the

[1] Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Signatory Labor Committee; Gilbert B. Martinez, who is the director of municipal utilities services of the Colorado Contractors' Association; Jack D. Parker, who is the president of the Charging Party Union; Richard L. Pascal, who is the president of the Pascal Construction Company; and Frank Slater, who is the vice president of the Schmidt-Tiago Construction Company.

The findings of fact to be set forth herein are based upon portions of the testimony of each one of the persons who appeared as a witness at the hearing. In addition, many of the findings of fact are based upon documentary evidence introduced by the parties at the hearing.

Not surprisingly, in view of the passage of time, some witnesses recalled some of the events differently, and some witnesses recalled certain statements being made during the negotiating sessions which other witnesses either did not recall or did not relate on the witness stand. However, it appeared that the witnesses were attempting to give the best recollections they had of these past events. There are some conflicts in their accounts, which I have resolved in setting forth the findings of fact in the sections to follow. Those resolutions were made after having the opportunity to observe all of the witnesses testify and after having reviewed and weighed all of their accounts in the transcript. I have based the findings of fact on the versions which appear to me to be the most reliable, accurate, and credible accounts from portions of the testimony of each one of the witnesses in the hearing proceedings.

Hereafter, simply for convenience, I will refer to the Charging Party as the Union, and, when another labor organization is mentioned, it will be designated by its name. Similarly, for convenience, I will refer to the Signatory Labor Committee as the SLC.

III. CERTAIN FACTS WHICH ARE NOT IN DISPUTE

The Colorado Contractors' Association is a chapter member of the Associated General Contractors. The president of the Colorado Contractors' Association appoints the chairman of SLC. During 1981 Krueger served as chairman of SLC, which negotiates with unions on behalf of employers who assign their bargaining rights to SLC. SLC forms five different committees to negotiate collective-bargaining agreements with unions representing the five basic crafts. For example, one committee was formed to negotiate with the union involved herein. In addition, there were other committees formed to negotiate separately with the Carpenters, Cement Masons, Laborers, and Operating Engineers.

All of the Respondent Employers named in the General Counsel's amended consolidated complaint had authorized SLC to bargain on their behalf with the Union. General Counsel's Exhibit 16 is a representative sample of the authorization and assignment of bargaining rights used by SLC and which had been signed by all 25 of the Respondent Employers.

General Counsel's Exhibit 2 is a copy of the prior collective-bargaining agreement which had been negotiated by SLC with the Union. It had effective dates from May 1, 1978, to May 1, 1981. The employees who are described in the job classifications set forth in article 21 of General Counsel's Exhibit 2 constitute an appropriate unit of employees, and on or about March 4, 1981, a majority of the employees of the Respondent Employers in those job classifications designated or selected the Union as their collective-bargaining representative. Without waiving any legal position in this proceeding, the parties stipulated that on or about March 4, 1981, the Union was the representative for the purposes of collective bargaining of the employees described in the unit referred to above, and that the Union was at that time the exclusive representative of all of the employees in that unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Introduced into evidence as General Counsel's Exhibit 3 was a copy of a letter dated February 3, 1981, from Krueger, as chairman of SLC, to the Union. It gives notice of the intention to terminate the 1978–81 collective-bargaining agreement as of the date of its expiration on May 1, 1981, and it informs the Union that SLC was in the process of securing bargaining rights assignments from employers for the purpose of negotiating a new agreement with the Union. Introduced into evidence as General Counsel's Exhibit 10 was a copy of a letter dated February 12, 1981, from Parker, as president of the Union, to Krueger. Copies also were sent to the employers who are listed in appendix A of General Counsel's Exhibit 2. It gives notice of the Union's intention to terminate the 1978–81 contract on its expiration date, and it states that the Union was prepared to bargain to reach a new agreement. Introduced into evidence as General Counsel's Exhibit 11 was a copy of the notice dated February 12, 1981, which was filed by the Union with the Federal Mediation and Conciliation Service and the Colorado Department of Labor and Employment.

IV. THE EVENTS

A. *The Meeting on March 11, 1981*

The first meeting held for the 1981 negotiations between SLC and the union took place on March 11, 1981, at the Colorado Contractors' Association building. Present for SLC were Krueger, Martinez, DeLaCastro, and Pascal. Present for the Union was Parker.

Introduced into evidence as General Counsel's Exhibit 4 was a copy of a list of the names and addresses of contractors who had assigned their bargaining rights to SLC for negotiations with the Union in 1981. That list was presented by SLC to the Union at the March 11, 1981, meeting. Martinez advised Parker that the document may not be complete because at that point in time Martinez had not received a response from all of the contractors. Parker requested that he be given a copy of the assignment of bargaining rights when the complete list of employers was attained. Parker acknowledged at the hearing that the list contained some different names of employers than those set forth in the 1978–81 collective-bargaining agreement. Parker raised no objection to that list.

The parties agreed upon dates for future negotiating sessions, which would be held each Thursday during the month of April. They also agreed that the location of the

meetings would alternate between the offices of the Colorado Contractors' Association and the Union's offices. The parties further agreed to use "a tentative agreement system," whereby the parties understood that a full agreement had not been reached until all articles had been agreed upon by the parties and the complete agreement ratified by the union membership.

B. *The Meeting on April 2, 1981*

The second meeting between SLC and the Union during the 1981 negotiations was held on April 2, 1981, at the Colorado Contractors' Association building.

At that meeting, SLC provided the Union with an updated list of employers who had assigned bargaining rights to SLC for the purpose of negotiations with the Union. The document contained an additional employer's name and address, which then made it a list of 24 such employers. (See G.C. Exh. 5.) Parker raised no objection to the expanded list, and he consented to adding the new employer. He testified at the hearing, "They were conducting a campaign to get contractors to be part of the Signatory Labor Committee, and said they hadn't had responses from all of them, but would notify us as they came in, which they did."

SLC also presented to the Union certain contract proposals which are contained in the multipage document which was introduced into evidence at the hearing as General Counsel's Exhibit 6. The proposals pertain to the following topics: hiring procedures; contractual disputes; hours of work and overtime rates; and fringe benefits.

The Union also presented to SLC certain contract proposals which are contained in the multipage document which was introduced into evidence at the hearing as General Counsel's Exhibit 7. The proposals pertain to the following topics: contractors who had not assigned bargaining rights to SLC becoming parties to the contract only by the written consent of the Union; majority status of the Union; union-security clause and checkoff of union dues; a remedy for manning and hiring hall violations; travel and subsistence; and contractors' responsibility for subcontractors.

With regard to the contract proposals from the union, Krueger testified, "Well, the packet of proposals we got from the Teamsters were the same as the packet of proposals we got from the Operators. During our discussions in our negotiations, whenever we would come to talk about an article, changing it, the Teamsters indicated they'd take it under advisement, but if the Operators agreed to it, they probably would." However, Krueger acknowledged at the hearing that the proposals made by the Union and by the Operating Engineers were not identical in that the Union had 6 proposals for contract changes, whereas the Operating Engineers had about 25 proposals for changes in contract terms.

Martinez explained at the hearing that there were similarities in certain terms of the contracts which SLC negotiated with the five basic crafts. He said that the contractors "prefer to have some uniformity in some of the working conditions," and that SLC had attempted to get some similar provisions in the various contracts with the crafts. For example, if an operating engineer and a teamster were working in close proximity to one another and the work of one employee was dependent upon the work of the other one, both employees would take their break periods at the same time.

C. *The Meeting on April 9, 1981*

The third negotiating session between the parties was held on April 9, 1981, at the Union's offices. That was the first meeting in 1981 which Slater attended. He later was present at the meetings on April 23, April 30, and June 16, 1981. That was also the first meeting in 1981 which Easdon attended. He later was present at the meetings held on April 23, April 30, June 12, and June 16, 1981.

At the April 9, 1981, meeting, Martinez presented Parker with still another updated list of employers who had assigned their bargaining rights to SLC in negotiations with the Union. That list added one more name and address of a contractor, which made a total of 25 employers on the list. (See G.C. Exh. 8.) Parker raised no objection on behalf of the Union to the new list, and he consented to adding the new employer to the unit.

D. *The Meeting on April 23, 1981*

The fourth meeting for 1981 negotiations between SLC and the Union took place on April 23, 1981.

The fact that other committees of SLC were negotiating during the same period of time with the other labor organizations previously mentioned was a fact which both parties kept in mind. Pascal recalled at the hearing, "Occasionally, on different instances, there were some items that the Teamsters wanted to keep the same so their men would have the same opportunity as the Operating Engineers, and there were some items that we wanted to keep the same, and there were some items that we wanted different." Pascal specifically recalled that the Union wanted the starting time for work and the lunch hour to be the same.

Pascal also remembered, "We occasionally wanted some differences in there. We didn't really care at all on starting time for Operators, it basically was a straight shift, but we wanted to stagger some times for the Teamsters. And we wanted to have some different items in there for Teamsters that we had no feelings on as far as a need for the Operators at all."

With regard to the discussion at the April 23, 1981, meeting as to why negotiations had not progressed, Pascal testified, "I remember some discussion on that. It could have been anybody in the crowd that asked it, I couldn't remember for sure if it was Mr. Parker that said that, and the discussion was it just seemed like everybody was dragging their feet until the Operators could come up with some kind of settlement. Their price was so high that nobody was willing to settle much below that, afraid they'd be left out to dry." Pascal recalled, in reference to what had happened during the 1978 contract negotiations, that Parker stated at the meeting that the Operating Engineers would have to settle first so that the other crafts did not get "leapfrogged." Nevertheless, Pascal said at the hearing that no one representing SLC said anything at the meeting to the effect that

SLC did not want to meet with the Union until SLC had settled with the Operating Engineers.

E. *The Meeting on April 30, 1981*

The fifth meeting between the parties for contract negotiations in 1981 took place on April 30, 1981, at the Colorado Contractors' Association building. Present for SLC were Krueger, Martinez, Pascal, Slater, and DeLaCastro. Present for the Union were Parker and Easdon.

By the time of that meeting, there had been a number of proposals from each side which had been adopted by the parties or which had been withdrawn by the parties. Except for monetary issues, Parker believed there were no issues of significance between the parties. He testified, "Our demands could have been resolved within ten minutes."

DeLaCastro recalled regarding the April 30, 1981, meeting that SLC representatives were "trying to find out if there was any meeting of the minds where we might be on wages, and it wasn't an official deal. We just threw it out, sort of test the water, on the dollar twenty-five. It was just—it was not a written-out situation. We were just trying to find out where we were."

Pascal testified, "On April 30 we basically went through all the outstanding proposals on both sides. They came down to basically we had very few left, I'd say that one good half hour session we could have solved all of the outstanding problems. And the meeting drew to a close, and close to the end of the meeting it seems like Jack and I started a discussion on what it would take to settle right then, before the deadline." The deadline, of course, had reference to the May 1, 1981, expiration date of the prior collective-bargaining agreement. Pascal further recalled at the hearing, "And we just went back and forth at each other for a while as far as you give this and I give that, and price and wages. I said something to the effect that the Operators are at $3, would you guys go for a dollar. And he came back and said, 'Well I think we could probably settle somewhere closer to two fifty or $2.'" Pascal said that a final offer was not made, but he recalled that Krueger asked if Parker would accept $1.25. Pascal testified, "And Jack said, 'We'll take anything under advisement.'"

The notes made by Martinez of the April 30, 1981, meeting do not mention any wage offer or wage proposal being made. However, Parker acknowledged that he was asked what it would take to settle on a contract if the parties withdrew all of their proposal for changes in the old contract and "closed the book." He further acknowledged that the $1.25 increase may have been mentioned at the April 30, 1981, meeting although it was not presented by SLC in writing. Parker said, "Not formally, but in passing. There was some discussion of wages between myself and Mr. Pascal."

The subject of the negotiations being conducted with the other crafts by SLC also came up at that meeting. Slater recalled, "In the meeting of April 30, when we kind of reviewed all the proposals that were outstanding, all of theirs and all of ours, it was two or three of their proposals where it was specifically mentioned that they would take whatever the Operating Engineers received. Those were specific proposals on travel pay, zone maps, and subcontractor clauses." Slater further recalled at the hearing, "The subject of the Operating Engineers invariably came up, but usually through a proposal that was being discussed where Mr. Parker of the Teamsters would refer that it would depend on what the Operators got. We were both aware that we were meeting with the Operating Engineers concurrently along with the other crafts."

According to Parker, SLC expressed concern at that meeting because of the proximity of the old contract expiration date and the fact that none of the five basic crafts had reached agreement. Parker testified:

> We knew that the expiration date was very close, and as I recall, none of the crafts had settled. The Signatory Labor Committee was very concerned that the time be spent, because in the past, the Operating Engineers had set the pattern or the pace for settlement. They were the leaders of the five crafts; they had the most people employed. They wanted to not negotiate with us further because we had very few issues at hand, and they would like to spend their time— They thought it would be better spent negotiating with the Operators, they needed more time there, and that they were willing—
>
> We discussed extending the agreement with retroactivity. As I recall, Mr. Krueger was reluctant to do that just flat out. He said if it was a short period of time, that they would consider it, but it was agreed at that time that we would not strike, that we would continue to negotiate and just keep the old contract in effect with the possibility of retroactivity if it didn't go any extended period of time.

At the hearing, Krueger gave his views as to why the parties did not meet during May 1981:

> Well, it was obvious to us that we weren't going to be able to come to any agreement with the Teamsters until the Operators were settled, and we were having a very difficult time with all the negotiations this year with all the crafts. And it was pretty well established, even with the other unions we were negotiating with, namely the Carpenters and the Cement Masons, that they were waiting for the Operators to settle.
>
> And I did indicate to Mr. Parker that I felt we had to concentrate there, and I think he agreed to that. We could have continued to meet with the Teamsters, but it would have been just a waste of time and we both pretty well knew it, I think.
>
> Then on the 18th of May, we reached impasse with the Operators, so we were really in a fix. We did continue to negotiate with the Laborers, we were making progress there. And we didn't have any meeting with the Operators, I don't believe, until about the 15th or 16th of June.

F. The *Meeting on June 12, 1981*

The sixth meeting between the parties for contract negotiations took place on June 12, 1981, at the Colorado

Contractors' Association building. Present for SLC were Krueger, Martinez, Pascal, DeLaCastro, and Wally Schmidt of the Schmidt-Tiago Construction Company. Present for the Union were Parker and Easdon.

According to Parker, "At that meeting, the contractors offered a package of a dollar twenty-five a year for the three-year term." The $1.25 offer included both wage increases and fringe benefit increases. SLC told the Union that was as much as SLC was authorized to offer. Parker recalled that Krueger said that the other crafts had released certain contractors, and Krueger asked the Union to do so. Parker testified, "He said that he was only authorized to offer a dollar 25 cents a year with this Signatory Labor Committee, that if I would release them that they felt there was more money forthcoming; if I would not release them, then that was all they could offer." In the event that the union did not agree to release the contractors, Parker recalled that Krueger "said the only choice they would have would be to disband and form a new committee."

Parker asked which contractors wanted out and which ones were willing to offer more money. SLC responded that they did not know at that time, and that they would not know until a meeting was held with all of the contractors on June 15, 1981.

With regard to the $1.25-per-hour offer, Parker advised SLC "that we'd take it under consideration, that we neither rejected nor accepted that offer at this time. We were concerned that it was too low to be accepted by the membership, but we would consider it." Parker acknowledged at the hearing that he did not bring the $1.25 offer to a vote by the union membership. He also acknowledged at the hearing that the Union intended to secure economic increases in line with what the Operating Engineers would receive.

G. *The Meeting on June 16, 1981*

The seventh and final meeting between the parties for negotiation of a new contract took place on June 16, 1981, at the Colorado Contractors' Association building. Present for SLC were Krueger, Martinez, DeLaCastro, and Slater. Present for the Union were Parker and Easdon.

At that meeting, Krueger presented to the Union a new list of contractors who had assigned bargaining rights to SLC for 1981 negotiations with the Union. That list contains the names and addresses of 18 employers. (See G.C. Exh. 9.) According to Parker, Krueger informed him "this was the new group of people that we would be negotiating with, that he was representing, and asked me to sign it." General Counsel's Exhibit 9 contains the following after the list of the employers' names and addresses: "The above list replaces all prior lists of contractors represented by the Signatory Labor Committee in 1981 negotiations. The Union and the SLC hereby agree to release from the multi-employer's unit all employers whose names appear on prior lists but not on this list." Thereafter follow spaces for each party to sign.

Concerning the discussion regarding the document which later was introduced as General Counsel's Exhibit 9, Parker recalled:

> Yes, we went through the old list and asked why various contractors wanted out, and they gave us the best information they had. They had contacted all of them in their meeting and there was various reasons for them, some of them wanting out. This is the group that was left. They said that they could not negotiate further with us unless we agreed to this list.

Parker later testified, "I didn't object to this list. I objected to the deletion of certain contractors from the original list."

Parker told the SLC representatives that he would not agree to the change in the contractors, and that he would not sign the document. Parker testified, "Mr. Krueger told us he could not meet further with us unless we would agree with this and to let him know when I would agree to it, and they would meet." Krueger also indicated that they would release the contractors so the Union could sign agreements with the contractors independently or the Union could sign them to interim agreements.

Krueger said the parties were at an impasse, and Parker replied that he did not consider the parties to be at an impasse. Krueger stated that the Union had not responded to SLC's offer of $1.25 a year. Parker replied that the Union had a counterproposal, "but we would not give it to him at that time because of this requirement that we change the list of contractors." According to Parker, Krueger replied, "That that was their position that we would have to agree to this list of contractors before he could proceed further."

H. *Subsequent Events*

Introduced into evidence as Respondent's Exhibit 1 was a copy of a letter dated June 29, 1981, from Krueger to the 25 employers who had assigned their bargaining rights to SLC in negotiations with the Union. In pertinent part, it states:

> As you know, on June 16, 1981 the Signatory Labor Committee made its "last and best" offer to Teamsters Local #13. This offer, which was $1.25 increase May 1, 1981, $1.25 increase May 1, 1982 and $1.25 increase May 1, 1983, Zone 2 to remain as in the old Agreement which expired April 30, 1981, was flatly rejected by the Union. The Signatory Labor Committee believes that it has been at impasse with the Teamsters since that date.
>
> Recently we solicited the contractors whom we represent in bargaining with the Teamsters as to whether or not they desired to be released from their bargaining rights assignment. We had hoped that with a revised list of contractors we might be able to reach an agreement with the Teamsters on their behalf. We now have reason to believe that such would be impossible, unless we were amenable to offering substantially the same economic package that was given to the Operating Engineers, namely:
>
> 07/1/81 $1.30

11/1/81	.80
07/1/82	1.30
11/1/82	.75
07/1/83	1.00
11/1/83	1.00
	$6.15

The Signatory Labor Committee believes that sum to be excessive.

Accordingly, to allow each contractor the opportunity to choose the best course of action for his/her company, we are releasing all contractors from their bargaining rights assignment to the Signatory Labor Committee as regards Teamsters only. We are in fact disbanding this multi-employer unit of contractors. You are now at liberty to deal directly with this labor organization, alone or with other contractors of your choice.

If it is the decision of your company to undertake a course of action other than to sign a collective bargaining agreement with the Teamsters on terms dictated by them, we suggest you would be well advised to retain an attorney. You may consult with your attorney or the Colorado Contractors Association counsel, Charles E. Grover or David R. Gorsuch.

Also for your information you will find enclosed a copy of the letter which we are sending to the Teamsters Union.

Should you have any questions, please contact me or Gil Martinez of the Colorado Contractors Association.

Introduced into evidence as General Counsel's Exhibit 12 was a copy of a letter dated June 29, 1981, from Krueger to Parker. In pertinent part, it states:

As you know, the Signatory Labor Committee gave you its last and best offer on June 16, 1981. You rejected that offer and we have been at impasse since that time, with no movement or attempt to bargain on your side of the table.

We are hopelessly deadlocked. For the good of the industry, therefore, the Signatory Labor Committee has released from their bargaining rights assignments those contractors whom we represented in collective bargaining with your labor organization. The Signatory Labor Committee has disbanded whatever multiemployer unit may have existed. You are at liberty to approach those contractors directly, as they are now free to approach you on an individual basis, to negotiate towards reaching collective bargaining agreements. In the meantime, we are advising you that you may presume that the aforestated impasse and last best offer exists as regards each of the employers formerly represented by the Signatory Labor Committee.

For your ready reference you will find enclosed the list of employers whom the Signatory Labor Committee had represented and which had earlier been furnished to you.

The list of contractors referred to in the letter is the list which was introduced into evidence as General Counsel's Exhibit 8.

Introduced into evidence as General Counsel's Exhibit 13 was a confirmation copy of a mailgram which had been sent on behalf of Parker by the Union's attorneys to Krueger and the contractors involved. In pertinent part, it states:

IN RESPECT TO YOUR LETTER DATED JUNE 29, 1981 AND HAND DELIVERED TO US THE SAME DATE BE ADVISED OF TEAMSTERS CONSTRUCTION WORKERS LOCAL #13'S POSITION:

1. THERE IS NO IMPASSE IN THE CURRENT COLLECTIVE BARGAINING NEGOTIATIONS BETWEEN US AND YOUR COMMITTEE.

2. YOU HAVE UNLAWFULLY CONDITIONED BARGAINING WITH US WHICH IS THE SUBJECT OF OUR PENDING UNFAIR LABOR PRACTICE CHARGE AGAINST YOU. WE CONTINUE OUR DEMAND TO BARGAIN WITH YOU AS THE REPRESENTATIVE OF THE SIGNATORY COMPANY CONTAINED IN YOUR APRIL 9, 1981 LIST OF SIGNATORY COMPANIES.

3. WE DO NOT CONSENT OR AGREE TO ANY CHANGE IN THE MULTI-EMPLOYER BARGAINING WHICH HAS BEEN IN PROGRESS SINCE MARCH 11, 1981 AND OUR PROTESTING THE MATTERS SET FORTH IN YOUR JUNE 29, 1981 LETTER WITH NLRB THIS DATE. THOSE EMPLOYERS REPRESENTED BY YOU WHO HAVE REQUESTED OR SIGNED INTERIM AGREEMENTS HAVE BEEN INFORMED THAT THEY ARE BOUND BY THE MULTI-EMPLOYER BARGAINING AND ULTIMATELY BOUND TO ANY AGREEMENT WE REACH IN THE CURRENT NEGOTIATIONS WITH YOU.

4. WE HEREWITH NOTIFY YOU OF OUR NOTIFICATION TODAY TO THE F.M.C.S. OF OUR CONTINUING DEMAND TO BARGAIN, AND YOU ARE FORMALLY NOTIFIED HEREIN THAT WE ARE PREPARED TO MAKE A SUBSTANTIAL CONCESSION IN OUR WAGE OFFER TO YOU AND THE EMPLOYERS YOU REPRESENT AT THE NEXT BARGAINING SESSION.

5. WE PROTEST YOUR CONTINUING REFUSAL TO BARGAIN IN GOOD FAITH WITH US AND SHALL SHORTLY CARRY FORWARD OUR PROTEST WITH ENGAGING IN UNFAIR LABOR PRACTICE STRIKE AND PICKETING AGAINST YOU AND THE CONTRACTORS YOU REPRESENT IN THE MULTI-EMPLOYER UNIT.

WE HEREWITH NOTIFY EACH OF THE EMPLOYERS YOU REPRESENT BY COPIES OF THIS TELEGRAM OF TEAMSTERS #13'S POSITION.

Introduced into evidence as General Counsel's Exhibit 14 was a copy of a letter dated July 2, 1981, from FMCS Commissioner Thurman M. Sanders to Krueger. It requested that both parties meet on July 8, 1981, at the FMCS offices to attempt to resolve the parties' dispute. Parker and Easdon went to the scheduled meeting, but no representative from SLC appeared.

The first tentative agreement between SLC and the Operating Engineers was reached on June 24, 1981, but that agreement was not ratified by the members of the Operating Engineers. The second tentative agreement between those parties was reached on July 2, 1981, and that agreement was ratified.

The SLC had reached agreement with the Laborers on May 27, 1981. The SLC also reached agreements with the Carpenters and the Cement Masons. With regard to all four of those crafts, the four agreements were accomplished by SLC and those labor organizations only after each one of those labor organizations had consented to the release of certain contractors from the multiemployer unit in their negotiations.

The Union has signed interim agreements with 14 to 16 of the 25 employers on the list presented to the Union at the April 30, 1981, meeting. A copy of such an interim agreement was introduced into evidence as General Counsel's Exhibit 15. At the time of the hearing, the Union was engaged in a strike against only one of the Respondent Employers involved herein. That contractor was the Schmidt-Tiago Construction Company.

I. *Conclusions*

One of the several issues presented in this proceeding is whether there was a bargaining impasse in the contract negotiations between the Respondents and the Union. Therefore, it is helpful to review how the Board has defined an impasse. Two of the Board's decisions which describe a bargaining impasse furnish guidance here.

In its decision in *Taft Broadcasting Co., WDAF AM-FM TV*, 163 NLRB 475 (1967), enfd. *sub nom. American Federation of Television and Radio Artists, AFL-CIO, Kansas City Local* v. *N.L.R.B.*, 395 F.2d 622 (D.C. Cir. 1968), the Board held at 478:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

In its decision in *Hi-Way Billboards, Inc.*, 206 NLRB 22 (1973), the Board held at 23:

> A genuine impasse in negotiations is synonymous with a deadlock:[15] the parties have discussed a subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its respective position. When such a deadlock is reached between the parties, the duty to bargain about the subject matter of the impasse merely becomes dormant until changed circumstances indicate that an agreement may be possible.[16] Once a genuine impasse is reached, the parties can concurrently exert economic pressure on each other: the union can call for a strike;[17] the employer can engage in a lockout,[18] make unilateral changes in working conditions if they are consistent with the offers the union has rejected,[19] or hire replacements to counter the loss of striking employees.[20] Such economic pressure usually breaks the stalemate between the parties, changes the circumstances of the bargaining atmosphere, and revives the parties' duty to bargain.
>
> Thus, a genuine impasse is akin to a hiatus in negotiations. In the overall ongoing process of collective bargaining, it is merely a point at which the parties cease to negotiate and often resort to forms of economic persuasion to establish the primacy of their negotiating position. Moreover, the occurrence of a genuine impasse cannot be said to be an unexpected, unforeseen, or unusual event in the process of negotiations since no experienced negotiator arrives at the bargaining table with absolute confidence that all of his proposals will be readily and completely accepted. Therefore, it is clear than an impasse is but one thread in the complex tapestry of collective bargaining, rather than a bolt of a different hue. In short, a genuine impasse is not the end of collective bargaining.

[15] *Newspaper Drivers & Handlers' Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Inc.* [*Detroit Newspaper Publishers Association* v. *N.L.R.B.*, 404 F.2d 1159 (6th Cir. 1968), cert. denied 395 U.S. 923 (1969).

[16] *Transport Company of Texas*, 175 NLRB 763, 768, enfd. 438 F.2d 258 (5th Cir. 1971).

[17] *N.L.R.B.* v. *Erie Resistor Corp.*, 373 U.S. 221, 223 (1963).

[18] *N.L.R.B.* v. *Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL* [*Buffalo Linen Supply Co.*], 353 U.S. 87 (1957); *N.L.R.B.* v. *Brown, et al. d/b/a Brown Food Stores*, 380 U.S. 278 (1965); *American Ship Building Company* v. *N.L.R.B.*, 380 U.S. 300 (1965).

[19] *Eddie's Chop House, Inc.*, 165 NLRB 861.

[20] *N.L.R.B.* v. *McKay Radio & Telegraph Co.*, 304 U.S. 333 (1938); *N.L.R.B.* v. *Pecheur Lozenge Co., Inc.*, 209 F.2d 393 (2d Cir. 1953), cert. denied 347 U.S. 953.

Applying the descriptions of a bargaining impasse from the foregoing Board decisions to the facts in this case, I conclude that the evidence does not establish that there was a genuine impasse in contract negotiations between the parties. Here the parties had been successful in reaching agreements on a number of noneconomic matters. Naturally, both parties were well aware that negotiations were being conducted concurrently with the other four basic crafts. Thus, the bargaining between the parties involved in this proceeding did not take place without due concern for what was taking place in the concurrent negotiations between SLC and the other labor organizations previously mentioned in the findings of fact. For example, the employers had a desire that some of the contract terms be uniform in all of their agreements with the basic crafts, whereas the Union in this case also had a desire that some provisions be uniform with what was agreed to between SLC and other labor organizations. The example given at the hearing where the work of one craft employee would be dependent on the work of an employee in a different craft illustrates the practical concern of the parties for some uniformity in some of the contract provisions in all of the agree-

ments. Nevertheless, such noneconomic issues or nonmonetary issues did not preclude the parties from reaching an agreement here. Witnesses for both of the parties indicated that only a relatively small amount of time was needed to resolve any nonmonetary items.

However, the evidence shows that it was not just the monetary issue of the $1.25 offer which caused the cessation of bargaining between the parties. Actually, the $1.25-increase-per-year figure had come up at the April 30, 1981, negotiation session when Pascal and Parker explored various figures towards the end of that meeting. (See sec. E herein.) That figure of $1.25 was not an offer to the Union at that point in time. DeLaCastro candidly described it at the hearing as an attempt to "test the water." That seems like an accurate description to me. Even though the $1.25 figure was not presented as SLC's monetary proposal at that meeting on April 30, 1981, Pascal recalled at the hearing that Parker said, "We'll take anything under advisement." Thus, the Union did not reject the figure at that time, but instead indicated a willingness to consider such a proposal.

Significantly in terms of assessing the evidence as to whether a bargaining impasse was reached, the $1.25 increase figure had hardened into a firm and final monetary offer from SLC at the very next meeting between the parties, which was held on June 12, 1981. Without repeating the findings of fact, which are already set forth in section F herein, I conclude that the evidence reveals that SLC made it clear at that meeting that it would not budge from its $1.25 proposal so long as the existing multiemployer unit remained the same. It will be recalled here that Parker testified with regard to Krueger, "He said that he was only authorized to offer a dollar 25 cents a year with this Signatory Labor Committee, that if I would release them that they felt there was more money forthcoming; if I would not release them, then that was all they could offer." Krueger further informed Parker that, if the Union did not agree to release the contractors, then the only choice was to disband and form a new committee. Thus, I conclude that the evidence reveals that the $1.25 figure was presented to the Union by SLC as a virtually nonnegotiable figure insofar as the existing multiemployer unit was concerned. Negotiations for any figure other than $1.25 were linked to, and conditioned on, the Union's agreement to a nonmandatory subject of bargaining; that is, the scope of the bargaining unit. As Parker made clear in his testimony regarding the next meeting held on June 16, 1981, "They said that they could not negotiate further with us unless we agreed to this list." (See sec. G herein for the full details. The list referred to by Parker is the one introduced at the hearing as G.C. Exh. 9.) The Union's willingness to bargain with SLC regarding the $1.25 proposal in the existing multiemployer unit was shown by the fact that Parker had a counterproposal to make to SLC on their offer. However, it was not made by Parker as he explained at the hearing, "[W]e would not give it to him at that time because of this requirement that we change the list of contractors." Thus, the General Counsel's argument is persuasive that the parties were not at an impasse over the $1.25 offer, but instead that SLC was conditioning further bargaining on the Union's consent to release the contractors from the existing multiemployer unit. Thereafter, SLC disbanded the employers from the multi-employer unit, and no further bargaining took place in the multiemployer unit as that unit had existed up to that point in the negotiations.

As indicated above, I conclude that a genuine impasse did not exist. Therefore, the Board's holdings regarding the effect of an impasse on withdrawal from a multiemployer bargaining unit are not directly in point in these circumstances. See *Charles D. Bonanno Linen Service, Inc.*, 243 NLRB 1093 (1979), enfd. 630 F.2d 25 (1st Cir. 1980), 454 U.S. 404 (1982). See also *Marine Machine Works, Inc.*, 243 NLRB 1098 (1979), enfd. 635 F.2d 522 (5th Cir. 1981). Nevertheless, the Board's decision in *Charles D. Bonanno, supra*, reaffirms that the "unusual circumstances" exception is a narrow one. The Board held:

> For withdrawals after negotiations have begun, the Board has limited the "unusual circumstance" exception to cases in which "the very existence of an employer as a viable business entity has ceased or is about to cease"[9] and to cases where consensual employer withdrawals through separate bargaining have so depleted a unit that it would be "unfair and harmful to the collective-bargaining process" not to permit one or more of the remaining employers to withdraw.[10]

[9] *Hi-Way Billboards, Inc., supra* at 23.

[10] *Connell Typesetting Company, et al.*, 212 NLRB 918, 921 (1974).

I conclude that the evidence in this proceeding does not meet the Board's criteria described above for the "unusual circumstances" exception.

After considering the findings of fact previously set forth, the legal arguments ably urged by both parties at the hearing and in their post-hearing briefs, and the foregoing discussion, I conclude that a preponderance of the evidence establishes the General Counsel's complaint allegations that the Respondents did not bargain in good faith with the Union, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. At the times material herein, Respondent SLC acted as an agent for the Respondent Employers, who had assigned their bargaining rights to Respondent SLC to engage in negotiations with the Union for a collective-bargaining agreement.

2. The Respondent Employers are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The following employees of the Respondent Employers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The employees described in Article 21 of the 1978–1981 Teamsters Construction Workers, Local Union No. 13, Highway, Heavy Engineering, Utility and Building Construction agreement.

5. At all times material herein, the Union has been the exclusive collective-bargaining representative of the employees in the above-described unit.

6. The Respondent Employers and their agent, Respondent SLC, have engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by failing and refusing to bargain in good faith with the union by the following acts and conduct:

(a) Conditioning further contract negotiations with Union on the Union's consent to the untimely withdrawal of certain Respondent Employers from the multi-employer bargaining unit.

(b) Disbanding the Respondent Employers from the multiemployer unit and failing and refusing to meet and bargain with the Union as a multiemployer bargaining unit.

7. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Since I have found that the Respondent Employers and Respondent SLC have engaged in unfair labor practices within the meaning of Sections 8(a)(1) and (5) of the Act, I shall recommend to the Board that the Respondents be ordered to cease and desist from engaging in those unfair labor practices and to take certain affirmative action to remedy those unfair labor practices.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the recommended Order set forth below:

ORDER[1]

The Respondent Employers and Respondent SLC, their officers, agents, successors, and assigns, shall:

1. Cease and desist from failing and refusing to bargain in good faith with the Union by:

(a) Conditioning further contract negotiations with the Union on the Union's consent to the untimely withdrawal of certain Respondent employers from the multiemployer bargaining unit described below:

The employees described in Article 21 of the 1978–1981 Teamsters Construction Workers, Local Union No. 13, Highway, Heavy Engineering, Utility and Building Construction agreement.

(b) Disbanding the Respondent Employers from the multiemployer unit and failing and refusing to meet and bargain with the union as a multiemployer bargaining unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by the Act.

2. Take the following affirmative action which is deemed necessary in order to effectuate the policies of the Act:

(a) Recognize and, upon request, meet and bargain collectively with the union as the exclusive collective-bargaining representative of the employees of the Respondent Employers in the multiemployer unit described above, and embody in a signed agreement any understanding which may be reached.

(b) Post at the offices of all of the Respondent employers copies of the attached "Notice To Employees," which is marked as an "Appendix."[2] The Regional Director of Region 27 of the Board will provide copies of the notice to the Respondent Employers. After a representative of the Respondent Employers has signed those copies of the notice, the Respondent Employers shall post the notices immediately after receiving them. The Respondent Employers shall maintain the notices for a period of 60 consecutive days after they have been posted in conspicuous places, including all of the places where the Respondent Employers customarily post notices to their employees. The Respondent Employers shall also take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material during the posting period.

(c) Within 20 days from the date of this Order, the Respondent Employers and Respondent SLC shall inform, in writing, the Regional Director of Region 27 of the Board what steps the Respondent Employers and Respondent SLC have taken to comply with this Order.

[1] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain in good faith with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, as the exclusive collective-bargaining representative of the employees of the Respondent Employers in the unit described below:

The employees described in Article 21 of the 1978–1981 Teamsters Construction Workers, Local Union No. 13, Highway, Heavy Engineering, Utility and Building Construction agreement.

WE WILL NOT condition further contract negotiations with the Union on the Union's consent to the untimely withdrawal of certain Respondent Employers from the multiemployer bargaining unit described above.

WE WILL NOT disband the Respondent Employers from the multiemployer unit, and fail and refuse to meet and bargain with the Union as a multiemployer bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by the National Labor Relations Act, as amended.

WE WILL recognize and, upon request, meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the employees of the Respondent Employers in the multiemployer unit described above, and embody in a signed agreement any understanding which may be reached.

SIGNATORY LABOR COMMITTEE OF THE COLORADO CONTRACTORS' ASSOCIATION, INC.; APH SERVICE CO.; AMCOR, INC.; BARNETT COMPANY, DEMOLITION; BYERLY & BYERLY, INC.; CENTRAL CONSTRUCTION, INC.; CORN CONSTRUCTION CO.; MARTIN K. EBY CONST. CO., INC.; EISENHOWER CONSTRUCTION CO., INC.; GRANITE CONSTRUCTION CO.; GREAT NORTHERN ELECTRIC CO.; HARTLEY AND SONS, INC.; A. S. HORNER CONST. CO., INC.; JOHNSON BROS. CORP.; KENNY CONSTRUCTION CO., INC.; LAWRENCE CONSTRUCTION CO.; H-E LOWDERMILK CO.; W. G. MORGAN CONST. INC.; PASCAL CONSTRUCTION CO.; GERALD H. PHIPPS, INC.; SCHMIDT-TIAGO CONST. CO.; TAYLOR CONSTRUCTION CORP.; WATTS BROS., INC.; WINSLOW CONSTRUCTION CO.; UNDERGROUND CONST. CO., INC.; BURDICK CONTRACTORS, INC.